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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,075	11/29/2000	Peter Gansen	64251-006	9638

7590

10/27/2006

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EXAMINER

COONEY, JOHN M

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 10/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/726,075

Applicant(s)

GANSEN ET AL.

Examiner

John m. Cooney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 70-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicant's arguments filed 7-13-06 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 70-74 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenndoff et al.(5,844,013).

Kenndoff et al. disclose preparations of articles comprising adhered articles of polyurethane gel foams and polyurethane films reading on foams which read on the articles of applicants' claims (see column 4 line 38 - column 6 line 39, column 10 11-24,

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54-63, and 66, as well as, in its entirety, column 14 lines 11-19, and column 20 lines 46-51, as well as, the entire document). The claims do not provide structural features to distinguish their molded articles/seat cushions, the urethane components are not defined so as to distinguish over those of the reference, and the adhesive properties between the layers defined by the reference are implicit and inherent to the materials utilized. Additionally, the seat cushions as defined by the claims do not differ from the materials of Kenndoff et al. despite Kenndoff et al.'s intended use of their materials as wound dressing materials. The polyurethane gel foam of Kenndoff et al. read on the polyurethane gel component of applicants' claims, and the polyurethane foam component of applicants' claims are readily envisaged from Kenndoff et al.'s disclosure at column 10 lines 10-24 of foam sheets, micro- and macroporous plastic sheets, and preference for polyurethane sheets.

Applicants' indication in claim 73 and 74 that "said at least one polyurethane gel at least partially surrounds said polyurethane foam" and "said at least one polyurethane foam at least partially surrounds said polyurethane gel", respectively, does not serve to distinguish the products, as claimed, from the products of Kenndoff et al. in a patentable way. The articles of Kenndoff et al. are maintained to meet such a condition from the standpoint patentability.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 70-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenndoff et al.(5,844,013).

Kenndoff et al. disclose preparations of articles comprising adhered articles of polyurethane gel foams and polyurethane films as claimed by applicants (see column 4 line 38 - column 6 line 39, column 10 11-24, 54-63, and 66, column 11 lines 5-15, column 14 lines 11-19, and column 20 lines 46-51, as well as, the entire document). The claims do not provide structural features to distinguish their molded articles/seat cushions, the urethane components are not defined so as to distinguish over those of the reference, and the adhesive properties between the layers defined by the reference are implicit and inherent to the materials utilized. Additionally, the seat cushions as defined by the claims do not differ from the materials of Kenndoff et al. despite Kenndoff et al.'s intended use of their materials as wound dressing materials. The polyurethane gel foam of Kenndoff et al. read on the polyurethane gel component of applicants' claims, and the polyurethane foam component of applicants' claims are readily envisaged from Kenndoff et al.'s disclosure at column 10 lines 10-24 of foam sheets, micro- and macroporous plastic sheets, and preference for polyurethane sheets.

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Applicants' indication in claim 73 and 74 that "said at least one polyurethane gel at least partially surrounds said polyurethane foam" and "said at least one polyurethane foam at least partially surrounds said polyurethane gel", respectively, does not serve to distinguish the products, as claimed, from the products of Kenndoff et al. in a patentable way. The articles of Kenndoff et al. are maintained to meet such a condition from the standpoint patentability.

Kenndoff et al. differs from applicants' claims in that it does not particularly require additional layers within its specific requirements. However, Kenndoff et al. does in its disclosure of its backing materials recites that combinations of its disclosed backing materials may be employed. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed combinations of the backing materials of Kenndoff et al. within the teachings of Kenndoff et al. for the purpose of imparting their structural effects in order to arrive at the products of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Applicants' arguments have been considered but rejection is maintained for the reasons set forth above. The multilayer compositions as claimed are maintained to be within the purview of the teachings of Kenndoff et al. for the reasons as set forth above. Applicants' claims as they stand do not distinguish over the wound dressing compositions of Kenndoff et al. in a patentable way. Kenndoff et al.'s full disclosure is maintained to provision for and suggest multilayer compositions meeting those as defined by applicants' claims. Column 10 lines 17-18 provides for foam sheets and

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combinations thereof along with the other materials indicated, including mats, non-woven, knitted, or woven fabrics, which are indicative of textiles. It is seen to be well within the skill of the ordinary practitioner to employ combinations of these materials to provide padding, strength, and multiplication of these effects through combinations in order to arrive at the products of applicants' claims. Additionally, since plastic sheets, foamed sheets, polyurethane sheeting materials, and combinations of the same as well as combinations of the same with other materials are all provided for within the teachings of Kenndoff et al., arriving at the combinations of layers as claimed from the teachings of Kenndoff et al. is maintained to be well within the skill of the ordinary practitioner in the art.

The following cites are additionally held to be relevant to the instant rejection:

- 1.) It is prima facie obvious to substitute equivalents, motivated by the reasonable expectation that the respective species will behave in a comparable manner or give comparable results in comparable circumstances. *In re Ruff* 118 USPQ 343; *In re Jezel* 158 USPQ 99; the express suggestion to substitute one equivalent for another need not be present to render the substitution obvious. *In re Font*, 213 USPQ 532.
- 2.) The mere duplication of parts has no patentable significance unless a new and unexpected result is produced.) *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). {MPEP 2144.04 VI. B.}.

Finally, invention based on the implicit adhesive properties of the foam and gel materials is not seen. Such implicit adhesive properties are seen to properties associated with the materials themselves and applicants' claims are not directed

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towards degrees of adhesion that distinguish their claims from the teachings of Kenndoff et al.

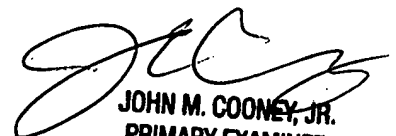
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JOHN M. COONEY, JR.
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